

REMARKS

Claims 21-23 have been canceled without prejudice, and Applicants reserve the opportunity to presents these claims or claims of a different scope in a continuation application. Claims 24-26 remain their previously presented form. New claims 27-53, including new independent claims 41 and 48, have been added. Accordingly claims 24-53 are currently pending.

Written description support for these amendments is found throughout the original specification, for example, at page 2, line 23 to page 3, line 2; at page 5, lines 1-30; at page 6, lines 3-29; at page 7, line 4 to page 8, line 24; at page 9, lines 5-10; and at FIGS. 1 and 3-8. No new matter has been added by this amendment.

Applicants would like to thank the examiner for participating in a telephone interview on July 24, 2007, during which the disclosures of Henning (U.S. Patent No. 5,947,812) and Manfred (EP 1099598A2) were discussed. Applicants respectfully submit that claims 24-53 are patentable over the Henning reference, either alone or in combination with Manfred.

The newly presented claim sets 41-47 and 48-53 are addressed first. Then, we turn to the previously presented claims 24 and 26 and their respective dependent claims.

New Claims 41-47

Independent claim 41 describes an air return bulkhead having structures that are not disclosed in the Henning reference, either alone or in combination with Manfred. Unlike claim 41, Henning fails to disclose an air return bulkhead "being releasably mounted to the trailer wall in an elevated position above a floor of the trailer using []at least one strap coupled to the trailer wall and []at least one mounting flange engaged with the trailer wall." Instead, Henning discloses a bulkhead having a bottom wall that rests directly on the trailer floor so that the "pallet stops" receive impacts from the cargo pallets. (See Henning at col. 3, lines 65-67; FIG. 14 (showing the bottom wall below the pallet stops 232).) Manfred also fails to disclose this claimed feature.

Furthermore, unlike claim 41, both Henning and Manfred fail to disclose a “mounting flange comprising an angled portion that extends from the trailer wall at an upward angle toward a tip portion, the tip portion passing through the slot of the bulkhead so that the mounting flange mates with the slot.” Henning provides no disclosure of a mounting flange that mates with a slot of the bulkhead. The Office Action contended that Manfred describes hooks (3, 4), but such hooks do not disclose the structure of the claimed mounting flange nor that a tip portion of the flange passes through a slot of the bulkhead so that the mounting flange mates with the slot. (*See* Manfred, Abstract and FIGS. 1, 2a, and 2c (describing that panels (5) are fitted with hooks (3 and 4) to rest on horizontal crossbars (6, 7)).)

Applicants respectfully submit that independent claim 41 is patentable over Henning, Manfred, and any combination thereof. Dependent claims 42-47 are patentable for at least the same reasons as claim 41 and for the inventive features separately described therein.

New Claims 48-53

Independent claim 48 describes a method of using an air return bulkhead. The claimed method includes operations that are not disclosed in the Henning reference, either alone or in combination with Manfred. Unlike claim 48, Henning fails to disclose that “the bulkhead is releasably mounted to the trailer wall in an elevated position above a floor of the trailer using []at least one strap and []at least one mounting flange.” Instead, Henning discloses a bulkhead having a “bottom wall” that rests directly on the trailer floor so that the “pallet stops” receive impacts from the cargo pallets. (*See* Henning at col. 3, lines 65-67; FIG. 14 (showing the bottom wall below the pallet stops 232).) Manfred also fails to disclose this claimed feature.

Also, unlike claim 48, both Henning and Manfred fail to disclose a method that includes “mating at least one slot of the bulkhead with at least one mounting flange engaged with the trailer wall, the mounting flange comprising an angled portion that extends toward a tip portion offset from the trailer wall, the tip portion passing through the slot of the bulkhead so that the mounting flange mates with the slot.” Henning provides no disclosure of mating a slot of a bulkhead with a mounting flange. The Office Action contended that Manfred describes hooks

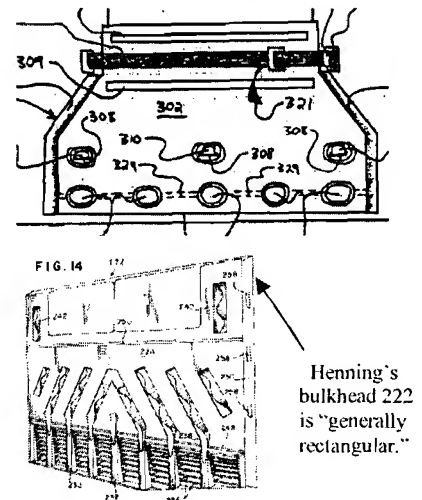
(3, 4), but such hooks do not operate to perform the claimed mating operation. (See Manfred, Abstract and FIGS. 1, 2a, and 2c (describing that panels (5) are fitted with hooks (3 and 4) to rest on horizontal crossbars (6, 7)).)

Applicants respectfully submit that independent claim 48 is patentable over Henning, Manfred, and any combination thereof. Dependent claims 49-53 are patentable for at least the same reasons as claim 48 and for the inventive features separately described therein.

Claims 24-25 and 27-33

Independent claim 24 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Henning alone. Applicants respectfully submit that failed to present a prima facie case of obviousness by showing that all of the claimed elements existed in the prior art.

First, unlike claim 24, Henning fails to disclose *“a lower panel portion that is wider than an upper panel portion such that the width of the plenum is greater proximal to the lower panel portion than the width of the plenum proximal to the upper panel portion.”* One example of this claimed feature is shown in Applicant's FIG. 3 (shown at right). To the contrary, Henning describes a bulkhead having a “rectangular” panel, as shown in Henning's FIG. 14 at below-right. (See Henning at col. 1, line 65; col. 3, lines 38-39; at col. 4, line 39.) Thus, the Henning reference fails to disclose the claimed structure and fails to articulate a line reasoning that would prompt a skilled artisan to modify Henning's “rectangular” panel.



The Office Action contends that Henning's “internal structure via baffles (38)” perform the same “*function*” as the claimed bulkhead, but this is improper for a rejection under § 103. (Office Action at page 3.) Regardless of the purported “function” of Henning's internal baffles (38), the Henning reference clearly fails to disclose the *claimed structure*.¹ There can be no

¹ Applicants do not concede that Henning's baffles 38 perform the “identical function” to the claimed bulkhead. Instead, Applicants merely note that the Office Action concentrates on a purported “function” of a prior art reference—not the actual structure.

doubt that the width of the Henning's rectangular plenum is not greater proximal to the lower panel portion. Because the Office Action fails to cite a prior art teaching of the *structure* set forth in claimed apparatus, the Office Action failed to satisfy its initial burden of developing a *prima facie* case of obviousness. Indeed, the MPEP prohibits this improper line of reasoning based on "function" and states that a *prima facie* case of obviousness "***cannot be based on . . . the mere fact that the components at issue are functional or mechanical equivalents.***" MPEP § 2144.06 (emphasis added); *see also* MPEP § 2114 ("Even if the prior art device performs all the functions recited in the claim, the prior art cannot anticipate the claim if there is any structural difference.").

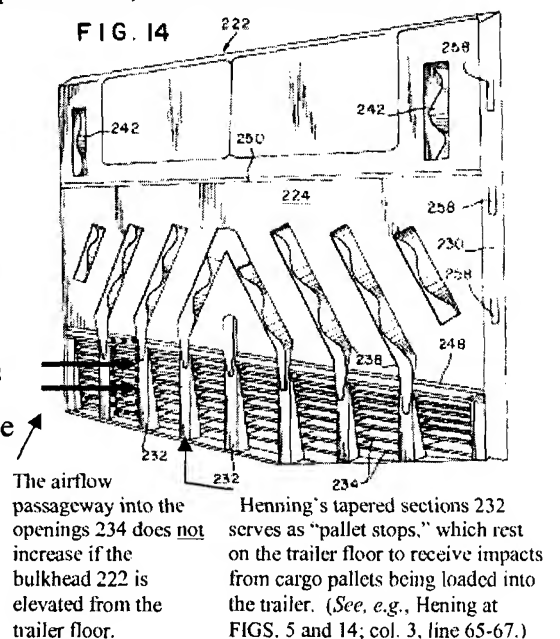
Furthermore, the Office Action contends that Henning could be modified to have the claimed configuration because "such a modification would have involved a mere change in the size/shape of the component which is generally recognized as ***being within the level of ordinary skill in the art.***" (See Office Action at p. 3 (emphasis added).) This line of reasoning is improper and cannot be relied upon to establish a *prima facie* case of obviousness. According to the MPEP, the rationale of modifications being "'well within the ordinary skill of the art at the time the claimed invention was made' . . . ***is not sufficient*** to establish a *prima facie* case of obviousness." MPEP § 2143.01(IV) (describing that (emphasis added)). Simply put, Henning does not teach the claimed structure, and the Office Action's conclusory statement is inadequate to fill in the blanks. For this reason alone, the rejection of claim 21 must be withdrawn.

To account for the failure of the Henning reference, the Office Action mistakenly contends that the Applicant has the initial burden of explaining why "a bulkhead of this particular shape solves any stated problem or is for any particular purpose that is unobvious to one having ordinary skill in the art." (See Office Action at page 3.) This contention is improper because erroneously attempts to place the Examiner's initial burden on the Applicants. The Applicants do not bear an initial burden of explaining why the claimed invention is superior to the prior art. *In re Slocombe*, 510 F.2d 1398 (CCPA 1975) ("There is no requirement that superiority over prior art be disclosed in the application."). Rather, it is the Examiner that bears the initial burden of showing that the structures of the claimed apparatus are found in the prior

art. MPEP § 706.02(j) (“The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done.”). Indeed, the MPEP prohibits such attempts to remove the initial burden from the Examiner. MPEP § 2142 (“If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.”).²

Thus, Henning does not teach all of the claimed *structures* set forth in claim 24, and the Office Action's improper contentions are inadequate to fill in the blanks. For this reason alone, the rejection of claim 24 must be withdrawn.

Second, unlike claim 24, Henning fails to disclose “a plurality of mounting members to releasably secure the peripheral portion in abutment with the wall *such that the bulkhead is secured to the wall in an elevated position above floor of the trailer.*” The Office Action contended that Henning's bulkhead 222 is “capable of securing” in an elevated position. Furthermore, the Office Action relies on a scientific theory that supporting Henning's bulkhead in an elevated position would “allow[] a larger airflow to enter therein.” This “larger airflow” theory is unsupported and incorrect. Contrary to the MPEP requirements, the Office Actions fails to provide evidentiary support for the theory that a “larger airflow [would] enter therein.” MPEP § 2144.02 (mandating that “when an examiner relies on a scientific theory, *evidentiary support for the existence and meaning of that theory must be provided*” (emphasis added)). This is because the theory is untrue. Contrary to the Office Action's theory, the cross-sectional area of the air openings 234 into Henning's bulkhead 222 does not increase to permit “larger airflow” if the bulkhead 222 is elevated above the floor. As shown in Henning's FIG. 14 (shown at right), the air openings 234 are defined in between the pallet stops 232—not on the bottom



² Applicants note that the bulkhead of claim 24 includes structures that serve useful purposes and provides solutions for the users. The issue here, however, is that the Henning reference fails to disclose the claimed structure and likewise fails to articulate a line reasoning that would prompt a skilled artisan to modify Henning's “rectangular” panel.

face of the bulkhead 222. Thus, the cross-sectional area of the airflow passage would not increase if Henning's bulkhead 222 were elevated above the floor.

Thus, Henning fails to disclose all elements of the bulkhead set forth in claim 24 and likewise fails to articulate a line reasoning that would prompt a skilled artisan to modify Henning's bulkhead. The Office Action's scientific theory of "larger airflow" is incorrect and unsupported—a violation of MPEP § 2144.02. For this reason alone, the rejection of claim 24 must be withdrawn.

Applicants request withdrawal of the rejection under 35 U.S.C. § 103. Prompt allowance of claim 24 is requested. Dependent claims 25 and 27-33 are patentable for at least the same reasons as claim 24 and for the inventive features separately described therein.

Claims 26 and 34-40

Independent claim 26 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Henning in view of Manfred (EP 1099598A2). Again, the Final Office Action failed to present a *prima facie* case of obviousness by showing that all of the claimed elements existed in the prior art.

First, the Office Action contends that Henning discloses the "primary inventive concept," but this is untrue. (Office Action at p. 4.) Unlike claim 26, Henning fails to disclose "a plurality of mounting members to releasably secure the peripheral portion in abutment with the wall *such that the bulkhead is secured to the wall in an elevated position above floor of the trailer.*" As previously described, the Office Action erroneously relied on a scientific theory of "larger airflow" for the proposed modification of Henning's bulkhead. Because this scientific theory was unsupported (violating MPEP § 2144.02) and incorrect, Henning fails to disclose this element of claim 26. Manfred is also lacking a disclosure of this claim element and fails to articulate a line reasoning that would prompt a skilled artisan to modify Henning's bulkhead. For this reason alone, Applicants request withdrawal of the rejection under 35 U.S.C. § 103.

Second, unlike claim 26, both Henning and Manfred fail to disclose "hook members *extending in an angularly upward direction from the wall when the hook members are*

coupled to the wall." The Office Action concedes Henning fails to describe the claimed hook members as described in claim 26. The Manfred reference is also lacking. In particular, Manfred teaches that neighboring panels (5) are fitted with downwardly extending hooks 3 and 4 that rest on horizontal crossbars (6, 7) reaching between the side walls of a cargo container. (See Manfred, Abstract and FIGS. 1, 2a, and 2c.) Thus, the proposed combination of Henning's bulkhead 222 with Manfred's hooks 3 and 4 would result in a bulkhead 222 that is mounted to horizontal crossbars extending between the trailer sidewalls. For this reason alone, the rejection of claim 26 must be withdrawn.

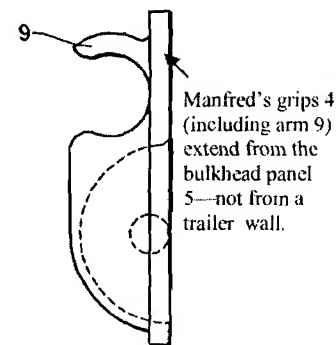


Fig. 2a

Accordingly, the proposed combination of Henning and Manfred fails to disclose all elements of the bulkhead set forth in claim 26 and likewise fails to articulate a line reasoning that would prompt a skilled artisan to modify Henning's bulkhead. Applicants request withdrawal of the rejection under 35 U.S.C. § 103.

Prompt allowance of claim 26 is requested. New dependent claims 34-40 are patentable for at least the same reasons as claim 26 and for the inventive features separately described therein.

Request for Reconsideration and Allowance

Applicant submits that claims 24-53 are patentable over the prior art of record. Reconsideration and allowance is respectfully requested.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the claim amendments herein do not signify concession of unpatentability of claims 21-23

prior to the amendments herein. Applicants hereby specifically reserve the right to prosecute the previously presented subject matter of claims 21-23 in a continuation application. Also, Applicants hereby specifically reserve the right to prosecute claims of different or broader scope in a continuation application. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on the amendments made herein.

This submission is accompanied by a Petition for Extension of Time. Please charge Deposit Account No. 06-1050 in the amount of \$335 for excess claim fees and for the petition for extension of time. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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